

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**CEDRIC R. EMANUEL,**

**Plaintiff,**

**v.**

**SPX CORPORATION/  
OTC TOOLS DIVISION,**

**Defendant.**

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**CIVIL ACTION No. 6:09-cv-220-JDL**

**ORDER**

Before the Court is Defendant SPX Corporation/ OTC Tools Division (“SPX”) Motion to Strike Declaration Testimony of Plaintiff’s Expert Witness or in the Alternative to Extend Time to Respond to Expert’s Declaration (Doc. No. 80) (“Motion to Strike”). Plaintiff Cedric R. Emanuel (“Emanuel”) has filed a Response (Doc. No. 81) (“Response”).

SPX represents that Emanuel did not previously identify the expert, Steve Kolenovic, whose testimony was relied upon in Emanuel’s Response to SPX’s Motion for Summary Judgment of Invalidity for Indefiniteness (Doc. No. 69) (“Indefiniteness Motion”). SPX asks that Mr. Kolenovic’s declaration be struck, or in the alternative, that SPX be granted additional time to depose Mr. Kolenovic and/or explore retaining its own expert in conjunction with the Indefiniteness Motion. MOTION TO STRIKE at 4. Emanuel disputes SPX’s challenges to its compliance with the Docket Control Order and argues that Emanuel’s retention of Mr. Kolenovic does not violate the Local Rules or the Docket Control Order because he is not offering opinions regarding claim construction. RESPONSE at 2–3.

Having reviewed the parties’ submissions, the Motion to Strike is **GRANTED in part**. The

Court will not strike Mr. Kolenovic's declaration and opinions in Emanuel's Response to the Indefiniteness Motion, but SPX will be permitted an opportunity to pursue further discovery related to his background and opinions and/or explore retaining its own expert to rebut Mr. Kolenovic's testimony. Accordingly, should SPX wish to re-file its Reply to the Indefiniteness Motion,<sup>1</sup> the Court **GRANTS** Defendant leave until **May 19, 2010 at 5:00pm CST** to do so. Emanuel's Surreply, if any, will be due on **May 24, 2010 at 5:00pm CST**.<sup>2</sup>

**So ORDERED and SIGNED this 6th day of May, 2010.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Prior to the Motion to Strike being resolved, SPX filed a Reply to the Indefiniteness Motion (Doc. No. 82) but indicated during a phone call placed to the Court on May 5, 2010 that it continued to seek additional time to pursue the relief requested in the Motion to Strike.

<sup>2</sup> SPX should communicate to Emanuel no later than **May 8, 2010 at 5:00pm CST** whether it intends to re-file its Reply to the Indefiniteness Motion. If the Reply will not be re-filed, Emanuel's Reply will be due according to Local Rules, as set forth in the Court's April 16, 2010 Order.